



GAHC010141112021



THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT PETITION (CIVIL) NO. 4844/2021

1. M/s Indraprastha Cold Storage, A Proprietorship entity of Mr. Ritesh Kumar Tibrewal, having its factory at Dolabari No. 1, N.H. 37, Tezpur – 784001, represented by its Proprietor, Sri Ritesh Kumar Tibrewala, S/o Sri Jugal Kishor Tibrewala, R/o Ganesh Mill Building, P.O. and P.S. – Tezpur – 784001, Assam.

2. M/s Indraprasth Roller Flour Mills, A Proprietorship Entity of Smti. Tripti Tibrewal, having its factory at Dolabari No. 1, N.H. 37 Tezpur – 784001, represented by its Proprietor, Smti. Tripti Tibrewal, W/o Sri Ritesh Kumar Tibrewala, R/o Ganesh Mill Building, P.O. and P.S. – Tezpur – 784001, Assam.

.....Petitioners

-Versus-

1. The UCO Bank, Head Office at 10, BTM Sarani (Brabourne Road), Kolkata – 1.



2. The Executive Director, UCO Bank, Head Office at 10, BTM Sarani (Brabourne Road), Kolkata-1.
3. The Asstt. General Manager, UCO Bank Customer Service Cell, Head Office at 10, BTM Sarani (Brabourne Road), Kolkata – 1.
4. The Zonal Manager, UCO Bank Zonal Office – Jorhat, T.N. Sharma Path, Nehru Park, Jorhat-785001 (Assam).
5. The Regional Manager, UCO Bank, Jorhat Regional Office, T.N. Sharma Path, Nehru Park, Jorhat – 785001 (Assam).
6. The Chief Manager, UCO Bank, Tezpur Branch, Tezpur – 784001.
7. The Enforcement Directorate (Ed), Government of India, represented by the Deputy Director, House No. 20, Rajgarh Road, Bye Lane No. 1, Chandmari Guwahati, Pin – 781003.

.....*Respondents*

Advocates :

- Petitioner : Mr. M.K. Choudhury, Senior Advocate
Mr. M. Dutta, Advocate
- Respondent nos. 1 - 6 : Mr. K.N. Choudhury, Senior Advocate
Mr. M. Sarma, Advocate



Respondent no. 7 : Ms. A. Gayan, Standing Counsel,
Enforcement Directorate [ED]

Dates of Hearing : 21.03.2023, 10.04.2023 & 25.04.2023

Date of Judgment & Order : 24.07.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER

Two proprietorship concerns – [i] M/s Indraprastha Cold Storage; & [ii] M/s Indraprasth Roller Flour Mills – have instituted the writ petition under Article 226 of the Constitution of India seeking a number of reliefs against the respondent United Commercial Bank [UCO Bank] and the functionaries/officials of the respondent UCO Bank, who have been impleaded as party-respondent no. 1 to party-respondent no. 6 in the writ petition. One Sri Ritesh Kumar Tibrewal is the proprietor of M/s Indraprastha Cold Storage whereas his wife, Smti. Tripti Tibrewal is the proprietor of M/s Indraprasth Roller Flour Mills. M/s Indraprastha Cold Storage was initially a partnership firm where Sri Ritesh Kumar Tibrewal and his mother, Gita Devi Agarwala [since deceased] were partners. After the death of Gita Devi Agarwala, the partnership firm - M/s Indraprastha Cold Storage stood converted to a proprietorship concern.

2. The background facts which are not in dispute, can be mentioned at this stage. In the year 2002, the respondent UCO Bank sanctioned credit facility to the petitioner no. 1, M/s Indraprastha Cold Storage in the form of a Term Loan of ₹ 99,64,000/-. The credit facility was extended for construction of a new cold storage by M/s Indraprastha Cold Storage at Tezpur, District – Sonitpur. As a new cold storage was eligible for subsidy under the Government of India [GoI]'s Central Investment Subsidy Scheme, the Government of India [GoI] had granted an amount of ₹ 53,32,800/- out of the total Term Loan amount of ₹ 99,64,000/-, as subsidy to



M/s Indraprastha Cold Storage under the Central Investment Subsidy Scheme. By a letter dated 12.03.2002, the Nodal Bank for the Central Investment Subsidy Scheme, National Bank for Agriculture and Rural Development [NABARD] informed the Regional Manager, UCO Bank, Jorhat [the respondent no. 5] that the Head Office of NABARD had credited the UCO Bank's current account maintained with the Reserve Bank of India [RBI] with an amount of ₹ 26,66,400/- on 11.03.2002 towards 50% advanced subsidy under the Central Investment Subsidy Scheme for construction of the new cold storage by M/s Indraprastha Cold Storage. Subsequently on 23.12.2002 and on 24.01.2003, amounts of ₹ 23,99,800/- and ₹ 2,66,600/- respectively were released by the Government of India [GoI] in favour of M/s Indraprastha Cold Storage under the Central Investment Subsidy Scheme.

- 2.1. The facts that a total amount of ₹ 53,32,800/- [= ₹ 26,66,400/- + ₹ 23,99,800/- + ₹ 2,66,600/-] was received towards subsidy from the Government of India [GoI] under the Central Investment Subsidy Scheme for M/s Indraprastha Cold Storage [the petitioner no. 1] against the Term Loan of ₹ 99,64,000/- extended to it by the respondent UCO Bank and stood credited in the subsidy account maintained at the Tezpur Branch of the respondent UCO Bank are evident from a Certificate issued by the Chief Manager, UCO Bank, Tezpur Branch [the respondent no. 6] in favour of the petitioner no. 1 on 04.12.2004 the contents of which are extracted hereinbelow in its entirety :-

UCO BANK
[A Govt. of India Undertaking]

From Tezpur Branch	To M/s Indraprasth Cold Storage, Dalabori, Tezpur
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Ref. No. _____

Date: 04.12.2004

Subject: Balance & Subsidy of Loan A/C



M/s Indraprasth Cold Storage Term Loan with us of Limit of ₹ 99.64 Lacs.

Certified that a sum of ₹ 53,32,800/- [Rupees fifty three lacs thirty two thousand eight hundred only] subsidy received on the Account of Indraprasth Cold Storage of Dalabori 37 NH Road, Tezpur on different dates mentioned below and credited in Subsidy A/C of our Bank.

03.04.2002 of ₹ 26,66,400/-

23.12.2002 of ₹ 23,99,800/-

24.01.2003 of ₹ 2,66,600/-

Total of ₹ 53,32,800/-

For UCO Bank
Chief Manager
Tezpur Branch

3. The case and subsequent events, in brief, projected by the petitioners in the writ petition are that : the petitioner no. 2 was also sanctioned credit facility of ₹ 1,40,00,000/- with investment subsidy amount of ₹ 35,65,000/-. The said subsidy amount was found duly adjusted in the loan account of the petitioner no. 2. An amount of ₹ 3,87,918/- was, however, found unauthorizedly withdrawn from the loan account of M/s Indraprasth Roller Flour Mills [the petitioner no. 2]. On the basis of a complaint lodged in that connection before the Banking Ombudsman, the Banking Ombudsman vide its Order dated 16.09.2008 directed the respondent UCO Bank to credit an amount of ₹ 3,87,918/- to the account of M/s Indraprasth Roller Flour Mills [the petitioner no. 2]. When the said amount was not credited by the respondent UCO Bank despite the Order of the Banking Ombudsman, the petitioner no. 2 had preferred a writ petition, W.P.[C] no. 1847/2016. The writ petition, W.P.[C] no. 1847/2016 was disposed of by an Order dated 22.04.2016. While disposing of the writ petition, the Court had observed that the respondent Bank had acted in a most irresponsible and arbitrary manner firstly, in unauthorizedly deducting the amount of ₹ 3,87,918/- from the account of the petitioner no. 2 and thereafter, in failing to reverse the payment despite receiving the advisory from the Banking Ombudsman as well as the



approval of the competent authority to reverse the transaction and in such circumstances, the Court found the same to be a fit case where a writ of mandamus should be issued. The writ petition was, thus, disposed of by directing the respondent Bank to deposit the amount unauthorizedly debited, to the account of the petitioner no. 2 within a period of 10 [ten] days from the date of receipt of a certified copy of the Order, failing which, the same would entail interest @ 9% per annum w.e.f. the date of receipt of the approval from the competent authority till realization of the amount.

4. In the year 2007, the petitioners came to learn that a financial fraud was found to have committed and detected in respect of the Term Loan account of M/s Indraprastha Cold Storage [the petitioner no. 1] and the subsidy amount of ₹ 53,32,800/- was found not credited to the Term Loan account of the petitioner no. 1 till then. It was suspected to be an act of the employees of the respondent UCO Bank. By not crediting the subsidy amount released under the Central Investment Subsidy Scheme in favour of the petitioner no. 1, the employees of the respondent UCO Bank had allegedly misappropriated the same. It is the case of the petitioners that had the subsidy amount of ₹ 53,32,800/- been duly adjusted/credited in the Term Loan account of the petitioner no. 1, the Term Loan account would have been closed in the year 2007 itself. Instead of closing the Term Loan account of the petitioner no. 1, the respondent UCO Bank had classified the Term Loan account as a Non-Performing Asset [NPA]. The petitioners stated to have brought such illegalities to the notice of the respondent Bank authorities by writing a number of letters – on 14.07.2009, 08.02.2010, 16.03.2010, 27.12.2010, 06.01.2011, 16.12.2011, 19.12.2011, 10.05.2012, 12.06.2012, 30.10.2012, 11.07.2013, 18.09.2013, 05.12.2013, 15.05.2014, 26.05.2014, 27.06.2014 and 28.11.2017 – requesting inter alia to close the Term Loan account of the petitioner no. 1 by adjusting/crediting the subsidy amount of ₹ 53,32,800/- as the petitioner no. 1 had otherwise, deposited all the EMIs.
5. On 22.01.2018, the petitioner no. 1 requested the respondent Bank to sanction a Short Term Cash Credit and on 16.03.2018, the respondent no. 6 had informed by



its letter bearing no. UCO/TEZ/ADV/Sanction/112/2017-18 dated 16.03.2018 that the competent authority by its letter dated 14.03.2018 had sanctioned the credit facility, subject to the terms and conditions, mentioned therein. The contents of the letter dated 16.08.2018 would be adverted to at the later part of this order.

6. The petitioners have alleged that they have been meted out harassments in various forms by the respondent Bank authorities in the subsequent period. The petitioner no. 1 is the owner of a plot of land measuring 9 Bighas 3 Kathas 2 Lessas [09B-03K-02L], covered by Dag no. 426 & Patta no. 153, located at Village – 1 no. Dolabari, Mouza – Bhairabpad, Lat no. 5, Tezpur Revenue Circle, District – Sonitpur [‘the subject-land’, for short]. The respondent Bank authorities in order to secure the afore-mentioned Term Loans/credit facilities extended to the petitioners, had created equitable mortgage by deposit of the Title Deed [Periodic Khiraj Patta] over a substantial part measuring 07B-04K-02L of the subject-land. The petitioner no. 1 intended to secure a loan of ₹ 2,00,00,000/-, sanctioned by M/s Tata Capital Financial Services Limited [M/s TCFSL] in favour of a partnership firm, M/s Indraprastha Motors where the petitioner no. 1 is a partner, vide a sanction letter dated 24.01.2020, by creating mortgage in respect of a part measuring 01B-04K-00L of the subject-land in favour of M/s TCFSL. In that connection, M/s TCFSL wrote to the respondent Bank vide an e-mail dated 24.02.2020 requesting the respondent UCO Bank authorities to provide NOC for creation of mortgage against that part measuring 01B-04K-00L of the subject-land, which was not under mortgage with the respondent UCO Bank in connection with the credit facilities extended to the two petitioner firms herein and also to confirm about keeping of the Periodic Khiraj Patta of the subject-land under the custody of the respondent UCO Bank as there was one single Periodic Khiraj Patta for the subject-land. The respondent UCO Bank authorities did not respond to the e-mail of M/s TCFSL and as a result, M/s TCFSL did not disburse the sanctioned loan of ₹ 2,00,00,000/- to M/s Indraprastha Motors. The respondent UCO Bank did not also sanction Seasonal Cash Credit limits to the petitioner no. 1 for the years : 2019-2020 & 2020-2021. The petitioners were sanctioned credit facilities by M/s Axis Bank, Tezpur Branch inter alia to the extent of ₹ 1,75,00,000/- and M/s Axis Bank



had also agreed to take over the entire loan account of the petitioner no. 2 from the respondent UCO Bank but due to hindrances created by the respondent UCO Bank authorities M/s Axis Bank could not take over the loan and/or extend the financial facilities to the petitioners.

7. The writ petition has been preferred seeking *inter alia* a direction in the nature of mandamus to the respondent Bank authorities to adjust the subsidy amount of ₹ 53,32,800/-, already in the Subsidy Reserve Fund Account of the respondent Bank and allegedly misappropriated, in the Term Loan account of the petitioner no. 1. Directions, in the alternative, to the respondent Bank authorities to carry out all necessary formalities, to clear all the accounts of the petitioners, and to close the Term Loan accounts of the petitioners, have also been sought. The petitioners have also sought for a direction to issue No Objection Certificates to the petitioners in connection with their Term Loan accounts so as to enable them to avail financial facilities from other banks/financial institutions and to release all land documents, which the petitioners have deposited with the respondent Bank for creation of equitable mortgage to secure the loans extended of the petitioners.
8. I have heard Mr. M.K. Choudhury, learned senior counsel assisted by Mr. M. Dutta, learned counsel for the petitioners; Mr. K.N. Choudhury, learned senior counsel assisted by Mr. M. Sarma, learned counsel for the respondent UCO Bank authorities i.e. the respondent nos. 1 – 6; and Ms. A. Gayan, learned Central Government Counsel [CGC] for the respondent no. 7.
9. Mr. M.K. Choudhury, learned senior counsel appearing for the petitioners has submitted that it was in the year 2002, the respondent UCO Bank had sanctioned credit facility to the petitioner no. 1 firm to the extent of ₹ 99.64 lakhs for construction of a cold storage, which was eligible to receive subsidy under the Government of India [GoI]'s Central Investment Subsidy Scheme. From the certificate of the respondent UCO Bank dated 04.02.2004 [Annexure-2 to the writ petition], it is evidently clear that the respondent Bank had received the entire eligible subsidy amount of ₹ 53,32,800/- against the credit facility of ₹ 99.64 lakhs,



from the Government of India [GoI] through the Nodal Bank, NABARD under the Central Investment Subsidy Scheme by 24.01.2003. It is submitted by him that the petitioner no. 2 was also sanctioned credit facility of ₹ 140 lakhs which was also found eligible to receive a subsidy amount of ₹ 35.65 lakhs under the Central Investment Subsidy Scheme. In respect of the loan account of the petitioner no. 2, the subsidy amount of ₹ 35.65 lakhs was duly adjusted but it was detected that an amount of ₹ 3,87,918/- was illegally withdrawn from the loan account of the petitioner no. 2. On approach being made to the Banking Ombudsman in that connection, the Banking Ombudsman directed the respondent Bank to credit the said amount in the loan account of the petitioner no. 2. When the respondent Bank did not abide by the direction of the Banking Ombudsman, the petitioner no. 2 had to approach the Court by way of a writ petition, W.P.[C] no. 1487/2016 and it was only subsequent to a direction in the nature of mandamus passed by the Court vide the order dated 23.08.2022 passed in the writ petition, the sum of ₹ 3,87,918/- which was unauthorizedly deducted, was credited to the loan account of the petitioner no. 2. It is submitted by him that as on date, the loan account of the petitioner no. 2 has no outstanding dues as the balance dues were paid by the petitioner no. 2 during the pendency of the writ petition.

- 9.1. The petitioners came to learn in and around the year 2007 that some financial frauds had occurred in the respondent UCO Bank which included the Term Loan account of the petitioner no. 1 firm, wherein there were involvements of the employees of the respondent UCO Bank and it was for such occurrence of financial frauds, the subsidy amount of ₹ 53,32,800/- was not duly credited to the Term Loan account of the petitioner no. 1. The learned senior counsel for the petitioners has drawn attention to the various correspondences made by the petitioners with the respondent Bank authorities, already mentioned in the preceding paragraph 4, to submit that despite repeated approaches made to the respondent Bank authorities by the petitioner no. 1 to adjust/credit the subsidy amount received by it under the Central Investment Subsidy Scheme, the respondent UCO Bank authorities on the flimsy ground that there were continuance of investigations as regards the financial frauds by the CBI and the Enforcement Directorate, denied to



adjust/credit the subsidy amount of ₹ 53,32,800/- till the year 2021. It is the contention of the petitioners that neither the two petitioner firms nor their proprietors were or are under the purview of the investigations conducted by the CBI and the Enforcement Directorate as regards the alleged financial frauds committed by the employees of the respondent Bank at its Tezpur Branch in collusion with some other persons/entities. Knowing fully well that the petitioner no. 1 firm did not have any role in the said financial frauds committed at the Tezpur Branch of the respondent Bank, the Chief Manager, UCO Bank, Tezpur Branch [the respondent no. 6] in his letter dated 16.03.2018 [Annexure-19 to the writ petition] addressed to the petitioner no. 1 firm, had clearly mentioned that the NPA Term Loan limit of ₹ 53.22 lakhs was due to staff fraudulent withdrawal of the subsidy amount and a write-off proposal in that regard was pending at the Head Office of the respondent Bank. But in the subsequent period, the respondent Bank authorities had made a somersault to deny the benefit of subsidy on the grounds that investigations made by the CBI and the Enforcement Directorate were pending. It is contended by him that after filing of the writ petition, the respondent UCO Bank authorities had made attempts to link the petitioner no. 1 with certain entities like M/s Hindon Wood Craft Industries, etc. with which some transactions in connection with the financial frauds committed by the employees of the respondent Bank at its Tezpur Branch had surfaced in the course of the above investigations.

- 9.2. It is contended by Mr. Choudhury that the respondent UCO Bank authorities had made their allegations on the basis of two seizure memos made by the CBI and a letter dated 01.02.2016 of the Enforcement Directorate. Two seizure memos, dated 30.07.2007 & dated 13.02.2008, were prepared by the CBI in connection with FIR no. RC 13[A]/2007-ACB-CBI-GWH, which was registered in connection with misappropriation of fund in different accounts maintained at Tezpur Branch of the respondent UCO Bank. One of such accounts was of M/s Hindon Wood Craft Industries. The Enforcement Directorate, Guwahati stated to have issued a letter bearing F. no. ECIR/07/Gau/PMLA/2009/1135 to the respondent UCO Bank on 01.02.2016 advising the Bank for submission of the Account Statement of M/s



Hindon Wood Craft Industries and as per available records of the Bank, there were two instruments, dated 03.09.2004 & dated 27.09.2004, amounting to ₹ 20,00,000/- in total, which were debited from M/s Hindon Wood Craft Industries and credited to the account of M/s Ganesh Das Oil Mills, with which the petitioner no. 1 had some relation. Since the misappropriation of fund in the accounts of M/s Hindon Wood Craft Industries, M/s Ganesh Das Oil Mills and other accounts were being investigated both by the CBI and the Enforcement Directorate, the respondent Bank authorities have unjustly taken the pretext of continuance of such investigations to deny the subsidy amount to the petitioner no. 1.

9.3. Mr. Choudhury has contended that had the subsidy amount of ₹ 53,32,800/- under the Central Investment Subsidy Scheme, already received by the respondent UCO Bank from NABARD entirely on 24.01.2003, been credit/adjusted in the Term Loan account of the petitioner no. 1, the Term Loan account would have been closed in the year 2007 itself. Instead of closing the Term Loan account of the petitioner no. 1 by making the credit/adjustment, the respondent UCO Bank authorities had illegally classified the Term Loan account of the petitioner no. 1 as NPA. Conspicuously, the respondent Bank authorities never demanded any amount against the Term Loan account of the petitioner no. 1 in all these years. He has asserted that the fact that had the subsidy amount been credited/adjusted in time and properly the Term Loan account would have been closed in the year 2007 is not controverted by the respondent UCO Bank authorities.

9.4. Mr. Choudhury, learned senior counsel for the petitioners has also referred to the various correspondences made by the authorities in the CBI and the Enforcement Directorate. He has specifically referred to the letter no. DGPGWH/RC0172007A0013/998 dated 30.03.2022 of the Head of Branch, CBI, ACB, Guwahati to the Zonal Head, UCO Bank, Jorhat Zone, Assam and the statements made in the affidavit filed by the Enforcement Directorate [the respondent no. 7], to contend that the no transactions relating to any of the two petitioner firms were or are under the investigations of the CBI and the Enforcement Directorate. From the clarifications provided by the said two



investigating authorities, it is clearly demonstrated that the retention of the subsidy amount of ₹ 53,32,800/- by the respondent UCO Bank authorities is an illegal and unauthorized act. It is his contention that the subsidy amount granted by the Government of India in favour of the petitioner no. 1 under the Central Investment Subsidy Scheme and lying in the subsidy account of the respondent Bank at its Tezpur Branch since 24.01.2003 is a property of the petitioner no. 1 and the act of unlawful retention of the said subsidy amount by the respondent Bank is clearly a violation of the right guaranteed under Article 300A of the Constitution of India.

9.5. The decisions relied on behalf of the petitioners' side are [i] M/s Hyderabad Commercials vs. Indian Bank and others, reported in 1991 Supp [2] SCC 340; [ii] Indian Bank vs. Godhra Nagrik Co-operative Credit Society Limited & another, reported in AIR 2008 SC 2585; and [iii] M/s Real Estate Agencies vs. Government of Goa and others, reported in AIR 2012 SC 3848.

10. Au contraire, Mr. K.N. Choudhury, learned senior counsel appearing for the respondent UCO Bank authorities has submitted that the documents on record indicate a money trail and such money trail clearly indicates the involvement of the petitioner no. 1 in the financial frauds committed in the respondent UCO Bank in collusion with the employees of the respondent Bank and other entities. In view of emergence of linkages of the petitioner no. 1 with the illegal withdrawal of money, the reliefs sought for in the writ petition are not to be acceded to as the investigation and/or trial pending at this stage has not absolved the petitioners in any direct manner. That apart, the writ petition also suffers from delay as the subsidy amounts, in instalments, were credited in the subsidy account of the respondent UCO Bank at its Tezpur Branch during the period from 2002 to 2003 and the writ petition was filed only on 06.09.2021.

10.1. To substantiate the contention that the money trail in connection with the financial frauds was relatable to the petitioners, references have made to [i] a form, Form no. 3CD, annexed at Page nos. 183 – 186 of the case papers, and [ii] an Audit



Report as on 31.03.2004, submitted under Section 44AB of the Income Tax Act, 1961, annexed at Page nos. 187 – 188 of the case papers; respectively and are appended to the additional affidavit of the respondent nos. 1 – 6. It has been submitted that the said documents have clearly demonstrated that the petitioner no. 1 was a partner of M/s R.K. Supply, referred to in the CBI investigation. In a Communication dated 20.07.2006, written by the petitioner no. 1 to the respondent no. 6, annexed at Page nos. 189 -190 of the case papers, which are also a part of the additional affidavit of the respondent nos. 1 – 6, the petitioner no. 1 had admitted that M/s R.K. Supply was a sister concern of the petitioner no. 1. Attention has also been drawn to another Communication dated 01.03.2006, annexed at Page no. 191 of the case papers and a part of the additional affidavit of the respondent nos. 1 – 6, to contend that those had established such linkage.

10.2. It has been contended on behalf of the respondent Bank authorities to the effect that the Account Statement pertaining to Subsidy Reserve Fund Account no. 1704 dated 15.03.2007 [annexed at Page nos. 197 – 200 of the case papers and a part of the additional affidavit of the respondent nos. 1 – 6], clearly mentioned that total subsidy received against Term Loan account was ₹ 53,32,800/- and on 27.08.2005, an amount of ₹ 52,00,000/- was transferred to M/s Hindon Wood Craft Industries. A letter dated 10.03.2008 of the petitioner no. 1 written to the respondent no. 6 [annexed at Page nos. 201 – 203 of the case papers and a part of the additional affidavit of the respondent nos. 1 – 6], indicated that M/s Ganesh Das Oil Mills is a sister concern of the petitioner no. 1 firm.

10.3. It has been further contended on behalf of the respondent Bank authorities, by referring to the documents annexed to an additional affidavit filed on 21.09.2022, that after transfer of ₹ 20,00,000/- unauthorizedly out of the amount of ₹ 53,32,800/- kept deposited in the subsidy account against the Term Loan account of the petitioner no. 1, to M/s Hindon Wood Craft Industries, the said amount was paid to M/s Ganesh Das Oil Mills by M/s Hindon Wood Craft Industries by way of two cheques, that is, [i] cheque dated 03.09.2004 for ₹ 12,00,000/-; and [ii] cheque dated 27.09.2004 for ₹ 8,00,000/-.



- 10.4. It is contended on behalf of the respondent Bank authorities that the petitioners are clearly guilty of suppression of vital and material facts as they have not approached the writ court with clean hands by putting forward all the facts without concealment or suppression. Thus, they are not entitled to any relief under the extra-ordinary, discretionary and equitable jurisdiction of this Court under Article 226 of the Constitution of India, as observed by the Hon'ble Supreme Court of India in *K.D. Sharma vs. Steel Authority of India Limited and others*, reported in [2008] 12 SCC 481.
11. Ms. Gayan, learned Central Government Counsel [CGC] appearing for the Enforcement Directorate, impleaded as respondent no. 7 vide Order dated 08.04.2022, has submitted that the Enforcement Directorate, Guwahati initiated its investigation subsequent to the FIR registered by the CBI vide FIR no. RC 13[A]/2007-ACB-CBI-GWH on 13.06.2017 for the offences under Sections 120B r/w Section 409 & Section 477A, Indian Penal Code [IPC] and Section 13[2] r/w Section 13[1][c] & Section 13[1][d] of the Prevention of Corruption [PC] Act, 1988 on the allegation of large scale financial fraud occurred in Tezpur Branch of the respondent UCO Bank during the year 2005. Ms. Gayan, learned CGC has submitted that the details of the steps the Enforcement Directorate had taken in the course of its investigation under the Prevention of Money Laundering Act [PMLA], 2002 are stated in its affidavit-in-opposition, filed on 07.05.2022.
12. In reply to the contentions put forward by the respondent Bank authorities about linkages of the petitioners with other entities like M/s Hindon Wood Craft Industries, M/s R.K. Supply, and M/s Ganesh Das Oil Mills in the afore-stated manner, it is contended on behalf of the petitioners that none of the documents brought on record by the respondent Bank authorities indicated in any manner that the Loan accounts of the petitioners had received any benefit/funds from the accounts of the said three entities. It has been asserted that the authorities in the CBI and the Enforcement Directorate did not find any involvement of the accounts of the petitioners vis-à-vis the perpetration of fraud under investigation. Rather,



an examination of the documents presented by the respondent authorities establishes that the petitioners are victims of the financial frauds committed in its accounts by non-adjustment of the subsidy amount released in their favour by the Nodal Bank, NABARD after receiving the subsidy amount from the Government of India as far back as on 24.01.2003. Though the documents presented by the respondent Bank authorities go to indicate some linkages of the petitioner firms with those three entities but the documents do not, in any manner, indicate any involvement of the petitioners in any transfer of funds illegally from the subsidy account maintained at Tezpur Branch of the respondent UCO Bank to any of the petitioners due to any fraudulent act. According to the petitioners, the core issue is whether the petitioners have any involvement in unauthorized transfer of money from the subsidy account maintained at Tezpur Branch of the respondent UCO Bank and as to whether the Term Loan accounts of the petitioners had received any amount from any of the entities involved in or the petitioners have been indicted by the two investigating authorities, that is, the CBI and the Enforcement Directorate in the financial fraud.

12.1. The allegations made by the respondent Bank authorities in its additional affidavit filed on 21.09.2022, are controverted by the petitioners by filing an additional affidavit-in-reply on 31.10.2022. It has been pointed out therein that the transfer of an amount of ₹ 52,00,000/- from the subsidy account maintained at Tezpur Branch of the respondent Bank to M/s Hindon Wood Craft Industries was made on 27.08.2005 only, as revealed from the respondent Bank's own Account Statement pertaining to Subsidy Reserve Fund Account no. 1704 dated 15.03.2007 [annexed at Page nos. 197 – 200 of the case papers and a part of the said additional affidavit of the respondent nos. 1 – 6]. Furthermore, the transactions occurred vide [i] cheque dated 04.09.2004 for ₹ 12,00,000/-; and [ii] cheque dated 27.09.2004 for ₹ 8,00,000/- allegedly between M/s Hindon Wood Craft Industries and M/s Ganesh Das Oil Mills were much prior to the commission of fraud in respect of the Subsidy Reserve Fund Account.



13. I have given due consideration to the submissions made by the learned counsel for the parties and have also gone through the materials brought on record through their pleadings. I have also gone through the FIR dated 13.06.2007 registered by the CBI and the Charge Sheet dated 31.12.2008 submitted by the CBI in connection with Case no. RC 13[A]/2007-ACB-CBI-GWH and the Operational Guidelines of the National Horticulture Board [NHB] pertaining to the Capital Investment Subsidy Scheme, placed on record by Mr. Sarma, learned Standing Counsel for the respondent UCO Bank. I have also gone through the contents of the letter no. DGP/WH/RC0172007A0013/998 dated 30.03.2022 of the Head of Branch, CBI, ACB, Guwahati and the decisions cited at the Bar.
 14. Before going into the rival contentions of the contesting parties, it is appropriate to refer to the cases registered and investigated pursuant to institution of the First Information Report [FIR] by Central Bureau of Investigation [CBI] and the complaint by the Enforcement Directorate under the PMLA, at first, as parties have extensively referred to the same contending that the crime of financial frauds committed at Tezpur Branch of the respondent UCO Bank was the subject-matter therein.
 15. The Central Bureau of Investigation [CBI] had registered a First Information Report [FIR] no. RC 13[A]/2007-ACB-CBI-GWH on 13.06.2007 for the offences under Sections 120B r/w Section 409 & Section 477A, Indian Penal Code [IPC] and Section 13[2] r/w Section 13[1][c] & Section 13[1][d] of the Prevention of Corruption [PC] Act, 1988 on the allegation of commission of large scale financial frauds in the Tezpur Branch of the respondent UCO Bank during the year 2005.
- 15.1. The FIR lodged in connection with Case no. RC 13[A]/2007-ACB-CBI-GWH reads as under :-

Information

A reliable source information has been received to the effect that Sh. Diganta Chakraborty, the then Senior Manager, UCO Bank, Tezpur Branch, Assam and Sh. Ratish Choudhary, the then Asstt. Manager, UCO Bank, Tezpur Branch, Assam, during the year 2005 entered into a criminal conspiracy



among themselves and others and in pursuance of the said criminal conspiracy, they abused their official position and misappropriated an amount of Rs. 3 crores of the UCO Bank, Tezpur Branch, Assam the details of which are as follows:

1. UCO Bank, Tezpur Branch had issued an FDR No. FDR/13157/04 dated 22.12.2004 for Rs. 50 lakhs in favour of Plan Fund, Tezpur University with maturity date as 22.6.2005. On 16.3.2005 Sh. Diganta Chakraborty and Sh. Ratish Choudhary dishonestly and fraudulently opened a false loan account in the name of 'Plan Fund, Tezpur University' and falsely showed disbursement of Rs. 50 lakhs to the said account against the said FDR. Sh. Diganta Chakraborty and Sh. Ratish Choudhary also issued six demand drafts vide No.1305-1307/MTL/975330, 975338-39, 1277-1279/MTL/975341-975343 all dated 16.3.05, totaling Rs. 50 lakhs in favour of M/s Digital Data System against the said loan. It is also alleged that Tezpur University neither applied for any loan nor received the above amount of Rs. 50 lakhs on 16.3.05. The FDR dated 22.12.2004 was encashed by Tezpur University on 21.9.06 and the maturity amount credited into their current account.

2. UCO Bank, Tezpur Branch had issued an FDR No.13286 dated 25.7.05 for Rs one crore in favour of NICPR Fund, Tezpur University. Sh. Diganta Chakraborty and Sh. Ratish Choudhary fraudulently and dishonestly issued a debit voucher dated 3.8.05 showing payment of Rs.1 crore as encashment of the said FDR and issued 6 demand drafts vide No.421-426/MTL/994677 to 994682, all dated 3.8.05, totaling Rs. 50 lakhs in favour of M/s Hita Technology Pvt. Ltd. and 6 demand drafts vide No.427-432/MTL/994683 to 994688, all dated 3.8.05, totaling Rs. 50 lakhs in favour of M/s Digital Data System. It is also alleged that Tezpur University had never requested the bank to encash the said FDR on 3.8.05 nor had the University issued any instruction to the bank for the issue of the drafts in favour of the said firms. The FDR dated 25.7.2005 was encashed by the University on 12.2.07 and its maturity value was credited to the current account of Tezpur University at UCO Bank, Tezpur Branch.



3. UCO Bank, Tezpur Branch had issued FDR No.13287 dated 25.7.2005 for Rs. one crore in favour of NICPR Fund, Tezpur University, Sh. Diganta Chakraborty and Sh. Ratish Choudhary fraudulently and dishonestly showed premature encashment of the same on 5.8.2005 and issued 6 demand drafts vide No. 447-451/MTL/994716 to 994721 all dated 5.8.2005 totalling Rs.50 lakhs in favour of M/s Digital Data System and 6 demand drafts vide No. 452-457/MTL/994722 to 994727 all dated 5.8.2005 totalling Rs. 50 lakhs in favour of M/s Hita Technology Pvt. Ltd.. Tezpur University had neither requested the bank for the encashment of the said FDR on 5.8.2005 nor issued any instructions to the bank for the issue of the bank drafts in favour of the said two firms. The FDR dated 25.7.2005 was encashed by the University on 12.2.2007 and the maturity value of the same was credited to the current account of Tezpur University in UCO Bank, Tezpur Branch.

It is also alleged that the total above said amount of Rs. 2.5 crores was credited into account No.018705000522 in ICICI Bank, Chowringhee, Kolkata of M/s Hita Technology Pvt. Ltd. operated by Sh. Arun Das Ghosh as Managing Director and account No.018705000032 in ICICI Bank, Chowringhee, Kolkata, of M/s Digital Data System, operated by Sh. Arun Das Ghosh as authorised signatory.

4. FDR No.13288 dated 25.7.2005 for Rs. 50 lakhs was issued by UCO Bank, Tezpur Branch in favour of NICPR Fund, Tezpur University. Sh. Diganta Chakraborty and Sh. Ratish Choudhary fraudulently and dishonestly issued a debit voucher dated 4.8.2005 for Rs. 50 lakhs showing encashment of the said FDR and credited a sum of Rs. 42,17,079/ into the loan account of M/s Multitech Construction and the balance amount of Rs. 7.82.921/- to the CC account of M/s Multitech Construction being operated in UCO Bank, Tezpur Branch. It is also alleged that while the said accounts of M/s Multitech Construction are false accounts, Tezpur University neither requested the bank for the encashment of the said FDR on 4.8.2005 nor issued any instruction to the bank to credit the said accounts of M/s Multitech Construction. The said FDR was encashed on 12.2.2007 and its maturity value was credited to the current account of Tezpur University at UCO Bank, Tezpur Branch.



The aforesaid facts prima facie disclose commission of offence u/s 120-, 409, 477 A IPC and section 13(2) r/w 13(1)(c) and 13(1)(d) of P.C. Act, 1988 against Sh. Diganta Chakraborty, the then Senior Manager, UCO Bank, Tezpur Branch, Assam, Sh. Ratish Choudhary, the then Asstt. Manager, UCO Bank, Tezpur Branch, Assam, Sh. Arun Das Ghosh-MD of M/s Hita Technology Pvt. Ltd and authorised signatory of M/s Digital Data System, M/s Multitech Construction and others. A regular case is therefore registered and entrusted to Addl. SP M.S. Singhal for investigation.

Superintendent of Police
CBI ACB Guwahati

15.2. The CBI after completion of investigation in connection with FIR no. RC 13[A]/2007-GWH submitted a charge-sheet under Section 173[2], CrPC on 31.12.2008 finding a prima facie case against the following accused persons:- [i] Sri Diganta Chakraborty, former Branch Manager, UCO Bank, Tezpur Branch; [ii] Sri Ratish Choudhury, former Assistant Manager, UCO Bank, Tezpur Branch; [iii] Sri Arun Das Ghosh, Managing Director, M/s Hita Technology Private Limited & Proprietor, M/s Digital Data Systems; [iv] Sri Idris Khan Somani, Proprietor, M/s Hindon Wood Craft Industries; [v] Dr. Jiten Barkakoty, Director, M/s Bishnujyoti Health Institute Private Limited; [vi] Sri Susanta Sarkar, Director, M/s Bishnujyoti Health Institute Private Limited; [vii] Sri Biju Kalita; [viii] Sri Manab Kakati; & [ix] Sri Gora Chand Mukherjee.

15.3. In the charge-sheet, transactions with M/s Hindon Wood Craft Industries were referred to at a number of places. References of M/s Hindon Wood Craft Industries had *inter alia* been made in the following manner :-

Investigation has revealed that these Rs. 2 crores were dishonestly and fraudulently utilised by Shri Diganta Chakraborty to partially pay off the false loan accounts opened by him in the name of M/s. Hindon Wood Craft Industries and M/s. Bishnujyoti Health Institute Pvt. Ltd. M/s. Hindon Wood Craft Industries is a proprietorship concern owned by one Shri Idris Khan



Somani [alias Shri Idris Khan] of Saharanpur. He was earlier conducting his business in Assam and other States of North East. He came in contact with Shri Diganta Chakraborty when the latter was posted at Dhekiajuli Branch of UCO Bank. Shri Diganta Chakraborty irregularly granted some loans to Shri Idris Khan when he was posted at the Dhekiajuli Branch and continued with his illegal activities in conspiracy with Shri Idris Khan even after he got posted to the Tezpur Branch. He sanctioned large sums of irregular loans to Shri Idris Khan while posted at the Tezpur Branch. The modus operandi adopted by Shri Diganta Chakraborty was that he used to arbitrarily and illegally debit existing and even non-existing bank accounts and then used to issue Demand Drafts for the corresponding amount in the name of different business associations owned by Shri Idris Khan viz. M/s Hindon Wood Craft Industries, M/s Al Mizan Frozen Foods Pvt. Ltd. and M/s IKS Frozen Foods Pvt. Ltd. Investigation has revealed that Shri Diganta Chakraborty opened a Current Account No. 1761 in the name of M/s Hindon Wood Craft Industries. As per the rules and policy of the UCO Bank as contained in Chapter-1 of the Manual of Instructions, Volume – 4, Part – 1 [January, 1998 edition] relating to Current Deposits, no debit balance can be allowed in a Current Account without prior sufficient security. Shri Diganta Chakraborty opened another Cash Credit Account No. 300015 in the name of M/s Hindon Wood Craft Industries without any written application or request by the proprietorship concern. Actually, this was a false account opened by Shri Diganta Chakraborty to accommodate his favoured persons. He allowed huge debit balances in both these accounts without any security, thereby, causing wrongful loss to the Bank. He also allowed huge cash withdrawals through cheques issued from the accounts of M/s Hindon Wood Craft Industries without any balance existing in the accounts.

The charge sheet further mentioned that investigation had further revealed that Shri Diganta Chakraborty sent 53 nos. of Demand Drafts of different amounts ranging from ₹ 0.50 lakhs to ₹ 9,98,345/- to Shri Idris Khan Samani in the name of his different business associations viz. [i] M/s Hindon Wood Craft Industries; [ii] M/s Al Mizam Frozen Foods Private Limited; & [iii] M/s IKS Frozen Foods Private Limited; without obtaining any money for the same and the same were deposited by Shri Idris Khan Samani in the respective bank accounts of those business



associations. The charge sheet indicating the details of five more demand drafts, further mentioned as under :-

In addition to the Demand Drafts issued in favour of the three business associations of Shri Idris Khan Samani, Shri Diganta Chakraborty issued Demand Drafts in the name of the different creditors of his business associations. Three creditors of Shri Idris Khan Samani found during investigation are M/s New Diamond Refrigeration Engineering Works, M/s. Kataria Cement Works, both of Saharanpur, and Shri Zaved Ahmed of Mumbai.

The charge sheet mentioned the amounts paid to these two creditors. The charge sheet further mentioned as follows :-

The rules and policy of the UCO Bank relating to issue of Demand Drafts as contained in Chapter 1 Part [A] of the Manual of Instructions, Volume-2 [Remittances] [January, 1998 Edition] were not followed by Shri Diganata Chakraborty while issuing these Demand Drafts in favour of the business associations of Shri Idris Khan Samani and his creditors, thereby, causing wrongful loss to the bank.

The charge sheet further revealed that out of the total 58 [=53+5] Demand Drafts, mentioned above, 10 [ten] demand drafts were prepared on behalf of M/s Hindon Wood Craft Industries to make payment by debiting some false loan accounts in the name of few individuals/entities like Sri Pradip Jain, Sri R.K. Jain, M/s Tezpur Rural Ware House, M/s Multitech Construction, etc. It was mentioned in the charge sheet that the vouchers for the remaining demand drafts could not be traced by the UCO Bank, Tezpur. However, when the fraud came to light, Shri Idris Khan Samani executed loan documents without any security in which he admitted liability to the extent of ₹ 2,27,92,350/- towards the Bank. The GEQD had confirmed the handwriting/signature of Shri Idris Khan Samani on these loan documents executed on 22.11.2006 while the demand drafts were availed earlier by him. The charge sheet also stated as follows :-



₹ 1 crore out of the ₹ 2 crores which was sent by Shri Arun Das Ghosh to Shri Diganta Chakraborty was utilised by the later to adjust the false loan accounts opened by him in the name of M/s Hindon Wood Craft Industries. In this manner, he was trying to window dress the loan accounts to escape detection during the inspection conducted by the officers from the Inspection wing of UCO Bank.

15.4. During the pendency of the writ petition, the learned Standing Counsel for the respondent UCO Bank had submitted before the Court on 15.02.2022 that Bank fraud investigations were under progress with regard to [i] M/s Hindon Wood Craft Industries; and [ii] M/s Ganesh Das Oil Mills. The investigations were conducted by the CBI and the Enforcement Directorate authorities since 2007-2008 and in the course of the investigations, the relevant Bank documents had been seized. It was further submitted by the learned Standing Counsel for the respondent UCO Bank on 15.02.2022 that records available with the respondent UCO Bank had revealed that ₹ 20,00,000/- was debited from the account of M/s Hindon Wood Craft Industries and was credited to the account of Sri Ritesh Kumar Tibrewal i.e. the proprietor of the petitioner no. 1, M/s Indraprastha Cold Storage. It was further submitted on behalf of the respondent UCO Bank that without approval and concurrence of the CBI and the Enforcement Directorate, the respondent UCO Bank was not in a position to close the account of the petitioner no. 1, M/s Indraprastha Cold Storage in which Sri Ritesh Kumar Tibrewal is the proprietor. It was further informed to the Court that the respondent UCO Bank had already written to the CBI and the Enforcement Directorate authorities in that connection. In view of such projections made before the Court, the Court on 15.02.2022 directed that in the event the respondent UCO Bank made an approach, the CBI as well as the Enforcement Directorate authorities shall allow the competent and authorised officer of the UCO Bank to peruse the relevant documents of M/s Hindon Wood Craft Industries and M/s Ganesh Das Oil Mills, seized by the CBI and the Enforcement Directorate authorities, in presence of competent and authorised officers of the CBI and the Enforcement Directorate. It was further observed that in the event an approach was made by the respondent UCO Bank authorities, the



CBI and the Enforcement Directorate authorities shall pass necessary order as to whether closure of the accounts of M/s Indraprastha Cold Storage [the petitioner no. 1] and M/s Indraprasth Roller Flour Mills [the petitioner no. 2] would affect the investigations relating to the Bank fraud matter in respect of M/s Hindon Wood Craft Industries and M/s Ganesh Das Oil Mills.

15.5. Pursuant to the order dated 15.02.2022, the CBI responded to the respondent UCO Bank vide its letter bearing no. DPGWH/RCO172007A0013998 dated 30.03.2022. By the letter dated 30.03.2022, the CBI informed that the CBI case relating to Bank fraud of UCO Bank was pending at the trial stage before the Court of learned Special Judge, CBI [Addl. Court no. 2], Guwahati. It was informed that the trial was then at the stage of evidence of prosecution witnesses. It was further informed that the concerned documents relating to M/s Indraprastha Cold Storage [the petitioner no. 1] and M/s Indraprasth Roller Flour Mills [the petitioner no. 2] were not relied upon documents and as such, the same were returned on 24.07.2013 vide Invoice no. 109/2013 dated 08.06.2013. It was also clarified that the CBI had nothing to say in the matter.

16. It further transpires from the affidavit-in-opposition filed by the respondent no. 7, that is, the Enforcement Directorate through the Deputy Director, Department of Revenue, Government of India at Guwahati that on the basis of the FIR no. RC 13[A]/2007-GWH of the CBI, the Enforcement Directorate, Guwahati had initiated investigation in the year 2009. It was revealed during the investigation that Sri Diganta Chakraborty, a charge-sheeted accused in the CBI case, had fraudulently transferred an amount of ₹ 2,20,68,345/- in the form of demand drafts to different firms/companies, that is, [i] an amount of ₹ 1,29,20,000/- to the account of Sri Idris Khan Somani, Proprietor, M/s Hindon Wood Craft Industries; [ii] an amount of ₹ 53,98,345/- to the account of M/s Al-Mirzan Frozen Foods Private Limited; and [3] a sum of ₹ 37,50,000/- to the account of M/s IKS Frozen Foods Private Limited. The said charge-sheeted accused person, Sri Diganta Chakraborty had also fraudulently transferred an amount of ₹ 26,49,005/- to the creditors of Sri Idris Khan Somani, M/s Hindon Wood Craft Industries.



16.1. The Enforcement Directorate had provisionally attached the proceeds of crime in the form of properties worth ₹ 1,96,07,100/- of Sri Idris Khan Somani and thereafter, attachment was confirmed by the Adjudicating Authority [PMLA], New Delhi vide an Order dated 27.07.2016. Subsequently, one Prosecution Complaint was lodged on 06.03.2017 before the Special Court [PMLA], Assam, Guwahati for commission of the offence under Section 3 of the Prevention of Money Laundering Act [PMLA], 2002. In the Prosecution Complaint, the persons arraigned as accused by the Enforcement Directorate are :- [1] Sri Diganta Chakraborty; [2] Sri Ritesh Choudhury; [3] Sri Arun Das Ghosh; [4] Sri Idris Khan Somani; [4] Sri Jiten Barkakoty; [5] Sri Susanta Sarkar; [6] Sri Biju Kalita; [7] Sri Manab Kakati; and [8] Sri Gora Chand Mukherjee. The proceedings of the same are stated to be pending.

16.2. As per the counter affidavit filed for the Enforcement Directorate, two persons named [i] Sri Prateek, Chief Manager, UCO Bank, Tezpur Branch; and [2] Sri Suresh Marko, Deputy Zonal Head, Zonal Office, Jorhat; visited the office of the Enforcement Directorate at Guwahati on 17.03.2022 and submitted a letter dated 15.03.2022 informing the Enforcement Directorate, Guwahati about the Order dated 15.02.2022 [supra] passed by this Court. In the letter dated 15.03.2022, the respondent UCO Bank had intimated that Sri Ritesh Kumar Tibrewal representing [i] M/s Indraprastha Cold Storage; and [2] M/s Indraprasth Roller Flour Mills; had stated in his affidavit submitted to the Court that the said two entities were not connected with [i] M/s R.K. Supply and [ii] M/s Ganesh Das Oil Mills. Claiming collusion amongst those entities and commission of fraud by them, the respondent UCO Bank stated to have submitted a number of documents to substantiate such claims on the parts of [i] M/s Indraprastha Cold Storage; and [2] M/s Indraprasth Roller Flour Mills, who were their borrowers. The respondent UCO Bank vide the letter dated 15.03.2022 requested the Enforcement Directorate to give necessary direction as to whether the closure of the accounts of [i] M/s Indraprastha Cold Storage; and [2] M/s Indraprasth Roller Flour Mills; would affect the then ongoing investigation relating to bank fraud in respect of [i] M/s Hindon Wood Craft Industries; and [ii] M/s Ganesh Das Oil Mills. It was further requested to



investigate those factual aspects surfaced vis-à-vis the alleged collusion and illegality amongst [i] M/s Indraprastha Cold Storage; [ii] M/s Indraprasth Roller Flour Mills; [iii] M/s R.K. Supply; and [iv] M/s Ganesh Das Oil Mills.

16.3. Responding to the letter dated 15.03.2022 of the respondent UCO Bank, the respondent Enforcement Directorate authorities wrote on 25.03.2022 vide its letter bearing File no. :- ECIR/07/GWZO/2009/672 whereby the Enforcement Directorate informed that the Directorate was investigating the case relating to fraudulent transfer of money by Sri Diganta Chakraborty, former Bank Manager in UCO Bank, Tezpur Branch to different entities including M/s Hindon Wood Craft Industries, Sri Idris Khan, Proprietor; and the Prosecution Complaint was filed on 06.03.2017 for commission of offences under the PMLA, 2002. In the light of the new facts provided by the respondent Bank vide letter dated 15.03.2022, in relation to alleged collusion of [i] Sri Ritesh Kumar Tibrewal; [ii] Smti. Tripti Tibrewal, W/o Sri Ritesh Kumar Tibrewal; and their companies/firms/sister concerns viz. [i] M/s Indraprastha Cold Storage; [ii] M/s Indraprasth Roller Flour Mills; [iii] M/s R.K. Supply; and [iv] M/s Ganesh Das Oil Mills, further investigation regarding any proceeds of crime and money laundering offences would be required under the provisions of the PMLA, 2002. The respondent UCO Bank was requested not to close the accounts as on that date and to submit all relevant documents for necessary scrutiny and examination. It has been averred that the letter dated 25.03.2022 was issued to the respondent UCO Bank in good faith expecting that they would give reply in a day or two. It has been averred that since the respondent UCO Bank suo moto came up with the new information, the respondent UCO Bank should have submitted the documents at the most within 5 [five] days but they did not submit them and did not even respond also. The Enforcement Directorate had made it clear that there was no direction from the Enforcement Directorate to the respondent UCO Bank not to close the accounts and it was only a request made for not closing the accounts till the respondent Bank provided all relevant documents within the expected 5 [five] days time. It is the stand of the Enforcement Directorate that on 27.04.2022, another letter was sent to the respondent UCO Bank to provide all relevant documents to the



Enforcement Directorate. The respondent UCO Bank had thereafter, sent an e-mail on 28.04.2022 forwarding therewith few documents related to the accounts maintained by the petitioners with the respondent UCO Bank. It has been made clear by the Enforcement Directorate in its affidavit that the Enforcement Directorate upon scrutiny of the documents provided by the respondent UCO Bank, did not notice any proceeds of crime in the loan accounts in relation to the case investigated by the Enforcement Directorate. The Enforcement Directorate has further averred that the respondent UCO Bank had also informed that no new case had been filed by them. The Enforcement Directorate has also made clear that in the above circumstances, no investigation has been initiated by the Enforcement Directorate on the basis of the new information provided by the respondent UCO Bank.

17. From the above discussion with regard to investigations carried out by the two investigating authorities, that is, the CBI and the Enforcement Directorate in connection with the financial frauds committed at Tezpur Branch of the respondent UCO Bank, it is noticed that the CBI after completion of investigation as regards the financial frauds had submitted the charge sheet, on 31.12.2008, arraigning 9 nos. of persons as accused and subsequent to the filing of the charge sheet, the trial court of learned Special Judge, CBI, Guwahati had framed charges and proceeded with the trial, which is stated to be pending as on date. The Enforcement Directorate has after completion of investigation, lodged one Prosecution Complaint before the learned Special Court [PMLA], Assam, Guwahati, on 06.03.2017, alleging commission of an offence under Section 3 of the PMLA Act arraigning 8 nos. of persons as accused. The petitioners are not arraigned as an accused by the two said investigating authorities either during the course of their investigations or at the time of filing of the Charge Sheet dated 31.12.2008/Prosecution Complaint dated 06.03.2017. From the contents of the letter of the CBI bearing no. DPGWH/RCO172007A0013998 dated 30.03.2022 [supra], it is revealed that the documents relating to the two petitioners were not relied upon documents and the same were returned to the respondent Bank on 24.07.2013 vide Invoice no. 109/2013 dated 08.06.2013. By making the comment



that it had nothing to say in the matter, the CBI had made it clear that the activities of the two petitioners were/are not within the ambit of its investigation. From the sequence of events happened, subsequent to passing of the Order dated 15.02.2022 of this Court, between the Enforcement Directorate and the respondent Bank authorities, and the statements made in the counter affidavit filed for the Enforcement Directorate, it is unfolded that it is the respondent Bank authorities who had made efforts to implicate the petitioners in some manner or the other in the financial frauds committed in Tezpur Branch of the respondent UCO Bank by trying to stretch the thread of suspicion through M/s R.K. Supply, M/s Ganesh Das Oil Mills and M/s Hindon Wood Craft Industries. There was, however, failure on the part of the respondent Bank authorities to establish such linkages of those entities with the two petitioner firms by any kind of supporting materials, when asked for by the Enforcement Directorate.

18. It can be seen from the Certificate dated 04.12.2004, extracted in paragraph 2.1 above, the subsidy amount of ₹ 53,32,800/- stood credited by 24.01.2003 in the Subsidy Reserve Fund Account maintained at the end of respondent no. 6. It is categorically asserted by the petitioners in paragraph 10 of the writ petition that had the subsidy amount of ₹ 53,32,800/- been duly adjusted to the Term Loan account of the petitioner no. 1, the Term Loan account of the petitioner no. 1 would have been closed in the year 2007. The said statement has not been specifically traversed and controverted by the respondent Bank authorities in their affidavits-in-opposition.
19. The Operational Guidelines of the National Horticulture Board [NHB], placed by Mr. Sharma, learned Standing Counsel for the respondent Bank, have provided the details of the Capital Investment Subsidy Scheme for 'Construction/ Modernisation/Expansion of Cold Storage and Storages for Horticulture Produce'. The NHB, an autonomous society set up by the Government of India, has inter-alia a mandate to develop post-harvest management infrastructure. The objectives of the Capital Investment Subsidy Scheme are to promote setting up of cold storages in the country for reducing post-harvest losses and creation of cold chain



infrastructure for farm to the consumers and modernization/rehabilitation of cold storages and addition in onion storage capacity. The eligible promoters include NGOs, Association of growers, partnership/proprietary firms, companies, corporations, etc. The Scheme has the following pattern of assistance :- [a] 25% promoter's contribution; [b] 50% term loan by banks @ PLR + 1% through NABARD refinance as applicable; and [c] 25% back-ended Capital Investment Subsidy by the NHB. The subsidy would flow from the NHB and would be operated by the NABARD, through commercial/cooperative banks/RRBs, etc. It has provided that the cost of 5,000 MT capacity for new cold storage and expansion of existing capacity could not exceed ₹ 2.00 crore. Subsidy @ 25% would not exceed ₹ 50.00 lakhs per project, including for the CA/MA stores and projects of higher capacity. However, for the projects in the North-Eastern States, maximum subsidy amount admissible was ₹ 60.00 lakh @ 33.3% of the Project Cost. Thus, the maximum subsidy limit per beneficiary including expansion was ₹ 50.00 lakh and in the case of the NE Region, ₹ 60.00 lakh. The Operational Guidelines have further provided for the procedure for sanction of project and release of subsidy in respect of projects where refinance loan is involved. In such cases, the subsidy amount was to be released to the NABARD by the NHB in advance. The NABARD would release 50% subsidy to the participating banks in advance for keeping the same in the Subsidy Reserve Fund Account of the concerned borrower, to be adjusted finally against the loan account of the bank on completion of the project. The remaining 50% of the subsidy amount was to be disbursed to the participating bank by the NABARD only, after conduct of an inspection by the Monitoring Committee consisting of officials from the NABARD, the participating bank and the NHB. The subsidy released by the NABARD to the bank on behalf of an individual unit which was sanctioned as assistance, was to be kept in a separate account. The adjustment of subsidy was to be made on the pattern of back-ended subsidy. Accordingly, the full project cost including the subsidy amount but excluding the margin money contribution from the beneficiary were used to be disbursed as loan by the banks. The repayment schedule was to be drawn on the loan amount in such a way that the subsidy amount should get adjusted after the bank loan portion [excluding subsidy] would be liquidated. The subsidy admissible to the



borrower under the Scheme was to be kept in the Subsidy Reserve Fund Account – Borrower-wise in the books of the financial bank. No interest was to be applied on it by the bank and in view of the same, for the purpose of charging interest on the loan, the subsidy amount was to be excluded. The balance lying to the credit of the Subsidy Reserve Fund Account would not form part of demand and time liabilities for the purpose of SLR/CRR.

20. As per the Operational Guidelines which have laid down the procedure of disbursement of the Capital Investment Subsidy Scheme for 'Construction/Modernisation/Expansion of Cold Storage and Storages for Horticulture Produce', the adjustment of the subsidy is to be made on the pattern of back-ended subsidy and the repayment schedule is to be drawn on the loan amount in such a way that the subsidy amount should get adjusted after the bank loan portion [excluding subsidy] is liquidated. Therefore, in the case in hand, the respondent Bank authorities were under obligation to transfer and to adjust the subsidy amount of ₹ 53,32,800/-, already received by them on 24.01.2003, as soon as the petitioner no. 1 had liquidated the bank loan portion of ₹ 99,64,000/- [excluding subsidy amount of ₹ 53,32,800/-]. The Operational Guidelines have cast a clear obligation on the part of the respondent Bank authorities to carry out the same. But, there is complete silence on the said aspect in the counter affidavits filed on behalf of the respondent Bank authorities.
21. The Account Statement pertaining to Subsidy Reserve Fund Account no. 1704 dated 15.03.2007 [annexed at Page nos. 197 – 200 of the case papers and a part of the additional affidavit of the respondent nos. 1 – 6], referred to by the respondent Bank in order to establish purported linkage between the petitioners and M/s Hindon Wood Craft Industries, does not inspire much confidence as it mentioned that the subsidy amount of ₹ 53,32,800/- was received against loan account of M/s Indraprasth Roller Flour Mills, that is, the petitioner no. 2 whereas the said subsidy amount was received only against the Term Loan extended to the petitioner no. 1, M/s Indraprastha Cold Storage. Such an erroneous **hand-written** Account Statement is ordinarily not expected of a Banking Institution. The said



Account Statement mentioned about transfer of an amount of ₹ 52,00,00/- to M/s Hindon Wood Craft Industries on 27.08.2005. The Operational Guidelines have stated about maintaining a Subsidy Reserve Fund Account borrower-wise separately. But from the **hand-written** Account Statement pertaining to Subsidy Reserve Fund Account no. 1704 dated 15.03.2007, it transpires that the respondent no. 6 had maintained only one Subsidy Reserve Fund Account in respect of more than one borrower.

22. At this stage, it is appropriate to refer to the contents of the letter bearing no. UCO/TEZ/ADV/Sanction/112/2017-18 dated 16.03.2018, already mentioned in paragraph 5 above. The contents of the said letter were in following terms :-

UCO BANK
A Govt. of India Undertaking

Ref: UCO/TEZ/ADV/Sanction/112/2017-18

Dated 16.03.2018

To,
M/s Indraprastha Cold Storage,
[Prop: Mr. Ritesh Kumar Tibrewala],
Polo Field Road,
Tezpur, Sonitpur [Assam]

Sir,
Sub : Short Term Cash Credit against Own stock of potato a/c M/S Indraprastha Cold Storage.

This has a reference to your application dated 22.01.2018 requesting for sanction of short term Cash Credit and we are pleased to inform you that the Competent Authority vide their letter no. ZOJ/CAD/BR/LS/57/2017-18, dated 14.03.2017 has sanctioned the under mentioned credit facility subject to fulfillment of the terms and conditions as stated below and in Annexure-I



Nature of Facility	Existing [Balance outstanding as on 28.02.2018] in lakhs	Sanctioned [in lakhs]
Term Loan	53.23	53.23
Working Capital Cash Credit	28.64	28.64
Seasonal Short Term Loan Cash Credit	[liquidated]	190.00
Total Fund Based Limit	81.87	271.87
Bank Guarantee	0.00	0.00
Total Non-Fund Based Limit	0.00	0.00
Total Exposure	81.87	271.87

[Note : NPA TL Limit of Rs. 53.22 lakhs is due to staff fraudulent withdrawal of Subsidy amount. The write-off proposal is pending at Head Office]

[a] The limit is to be disbursed only after obtaining prior permission from sanctioning authority submitting pre-disbursement compliance report [CMR-6Ao with PDIR in terms prescribed guidelines.

[b] The Bank will always be at its liberty to stop making advance or cancel the credit facility at any time without prior notice and without assigning any reason even though the said limit/Credit facility has not been fully utilized.

This sanction advice with annexure is provided to you triplicate with a request to return two copies duly accepted unconditionally by you [borrower] and guarantor putting signatures on each page of sanction letter/annexure with date.

Yours faithfully,
Chief Manager

23. The contents of the above-quoted letter dated 16.03.2018 of the respondent no. 6 clearly go to reveal that as on 16.03.2018, the amount of ₹ 53.22 lakhs was treated as staff fraudulent withdrawal from the Subsidy Account maintained at Tezpur Branch of the respondent Bank. It further reveals that a proposal for the writing-off of the said amount was pending at the Head Office of the respondent Bank. It can, thus, be clearly inferred that till 16.03.2018, the respondent Bank authorities had treated the sum of ₹53.22 lakhs as a case of fraudulent withdrawal



committed by staff and treating the said amount of ₹ 53.22 lakhs as staff fraudulent withdrawal, the respondent Bank authorities had decided to sanction another amount to the petitioner no. 1, as indicated in the letter dated 16.03.2018. The letter had further made it clear that the outstanding balance in the Term Loan Account of the petitioner no. 1 was, as on 28.02.2018, was ₹ 53.23 lakhs, which could be adjusted by the subsidy amount of ₹ 53,32,800/- received as far back as on 24.01.2003. It needs reiteration that the investigation caused by the CBI and the Enforcement Directorate were completed much before 16.03.2018, identifying the accused persons involved in the crime of misappropriation of fund at Tezpur Branch of the respondent Bank. With no new incriminating materials indicating involvement of the petitioners in the financial fraud occurred in Tezpur Branch of the respondent Bank, having been unearthed in the subsequent period, the respondent Bank authorities have no reason in not adjusting the amount of ₹ 53,32,800/- from the Subsidy Reserve Fund Account maintained at Tezpur Branch of the respondent Bank to the Term Loan account of the petitioner no. 1. From the materials on record, the case in hand is indubitably a case of unauthorized retention of the subsidy amount of ₹ 53,32,800/- which was extended to the petitioner no. 1 by the Government of India through the NHB and the NABARD, already on 24.01.2003 as well as unauthorized non-adjustment of the said amount in the Term Loan account of the petitioner no. 1 maintained in Tezpur Branch of the respondent Bank.

24. Mention is made by the respondent Bank authorities about two cheques, that is, [i] cheque no. 439890 dated 03.09.2004 for ₹ 12,00,000/-; and [ii] cheque no. 439898 dated 27.09.2004 for ₹ 8,00,000/-. In relation to the said two cheques, the respondent Bank authorities have contended that those documents go to show that an amount of ₹ 20,00,000/- out of the Capital Investment Subsidy Scheme amount of ₹ 53,32,800/- deposited in the Subsidy Reserve Fund Account of the respondent Bank, was unauthorizedly transferred to the account of M/s Hindon Wood Craft Industries and the said amount was later re-routed to the account of M/s Ganesh Das Oil Mills wherein the proprietor of petitioner no. 1 was interested. The cheque no. 439890 dated 03.09.2004 for an amount of ₹ 12,00,000/- was



issued by M/s Wood Craft Industries in favour of M/s Ganesh Das Oil Mills and the other cheque, cheque no. 439898 dated 27.09.2004 for an amount of ₹ 8,00,000/- was also issued by M/s Wood Craft Industries in favour of M/s Ganesh Das Oil Mills. The Statements of Accounts of M/s Hindon Wood Craft Industries for the concerned period also supports the fact of issuance of the said two cheques by M/s Hindon Wood Craft Industries to M/s Ganesh Das Oil Mills. The respondent Bank authorities have, however, not submitted any supporting document to show that there were subsequent transactions between M/s Ganesh Das Oil Mills and the petitioner no. 1 firm wherefrom an inference can be drawn that the money had been re-routed. In the affidavit-in-opposition filed by the respondent Bank authorities on 24.01.2022, the stand of the respondent Bank is that the transactions which took place between M/s Hindon Wood Craft Industries and M/s Ganesh Das Oil Mills were under investigation by the CBI and the Enforcement Directorate and without approval and concurrence of the CBI and the Enforcement Directorate, the loan accounts could not be closed and the security documents could not be returned, even if the borrower is agreeable to pay the entire borrowed amount. It may be apposite to mention here that the CBI did not submit charge sheet in FIR no. RC 13[A]/2007-GWH against M/s Ganesh Das Oil Mills or its proprietor/partner and the trial of the said case is in progress as on date. The CBI in its letter dated 30.03.2022 [supra] had also clarified the matter. In the Prosecution Complaint filed by the Enforcement Directorate on 06.03.2017 neither M/s Ganesh Das Oil Mills nor its proprietor/partner has been arraigned as accused and the Enforcement Directorate had further clarified the matter in its affidavit-in-opposition. Another concern, M/s R.K. Supply or its proprietor/partner is not arraigned as an accused either in the charge sheet submitted by the CBI or in the Prosecution Complaint submitted by the Enforcement Directorate. The respondent Bank authorities have sought to build its case on the allegation that there were linkages through monetary transactions between the petitioners' firms on one hand and M/s Ganesh Das Oil Mills and M/s R.K. Supply on the other hand, via M/s Hindon Wood Craft Industries. The form, Form 3CD showing transactions upto 31.03.2004, annexed at Page nos. 183 – 186 of the case papers, and the Audit Report as on 31.03.2004, annexed at Page nos. 187 – 188 of the case papers,



pertained to M/s R.K. Supply. But the allegation of the respondent Bank authorities is that the mischief in the form of fraudulent transfer of money from the Subsidy Reserve Fund Account to M/s Hindon Wood Craft Industries had occurred much later on 27.08.2005. One can easily conclude that such mischief in the form of fraudulent transfer of money from the Subsidy Reserve Fund Account to M/s Hindon Wood Craft Industries could not be possible without involvement of the employees of the respondent Bank as it is not possible to envisage or believe that an outsider can have access to the Bank records/system to commit such mischief. The charge sheet submitted by the CBI and the Prosecution Complaint submitted by the Enforcement Directorate have revealed clearly that the Bank employees had colluded with some outsiders, arraigned therein as accused, to commit the mischief. Neither of the petitioners' firms nor any of its proprietors nor any person associated either with M/s Ganesh Das Oil Mills or M/s R.K. Supply has been found to have colluded in the conspiracy of committing the financial fraud occurred in the respondent Bank, which were investigated into. Making of an allegation about collusion without any supporting materials is different from making of an allegation about collusion with some supporting materials for drawing an inference about such collusion. The materials available in the case record goes to indicate that the case in hand falls in the first category.

25. In a writ petition under Article 226 of the Constitution of India, the High Court has jurisdiction to try issues both of fact and law. In the process, the Court has to consider as what facts are in dispute and what facts are not in dispute and such a state comes after the exchange of pleadings in the form of affidavits amongst the parties is complete as a writ petition is ordinarily decided on the basis of affidavits. It was for construction of a new cold storage the petitioner no. 1 availed the financial assistance from the respondent Bank on the premise that it would be eligible for subsidy under the Capital Investment Subsidy Scheme of the Government of India implemented through the NHB and the NABARD. The subsidy amount of ₹ 53,32,800/- was disbursed under the said Capital Investment Subsidy Scheme. The Operational Guidelines have made it clear that the financing bank has to keep the Capital Investment Subsidy amount in a separate amount, as the



said subsidy amount is in the nature of back-ended subsidy, till the bank loan portion is liquidated and it is only thereafter, the subsidy amount is to be immediately adjusted. The role of the financial bank is, thus, akin to a trustee till a certain point of time. The subsidy amount of ₹ 53,32,800/- is only meant for the petitioner no. 1 and the respondent Bank had the duty to transfer the said amount to the Term Loan account of the petitioner no. 1 as soon as the time for transferring the same had arrived. From the sequence of events discussed above, the respondent Bank authorities did not discharge the obligation cast on them in the manner required. Just because the said subsidy amount had been fraudulently withdrawn and misappropriated by some of the Bank employees themselves, already identified, the respondent Bank authorities had resorted to various means which cannot be termed as bona fide and they are seen to have taken various pleas, which are specious in nature. In the case in hand, it is not in dispute that the subsidy amount of ₹ 53,32,800/- was received by the respondent Bank as far back as on 24.01.2003 and the said amount has not been transferred to the Term Loan account of the petitioner no. 1 till date in the manner required, by taking specious pleas resulting in unauthorized retention of the said amount. In such backdrop, the decision in *K.D. Sharma* [supra] comes, in the considered view of the Court, more in aid of the petitioner, rather than to the aid of the respondent Bank authorities as its hands are found to be soiled.

26. Article 226 of the Constitution of India, which deals with powers of the High Courts to issue certain writs *inter alia* stipulates that every High Court has the power to issue directions, orders or writs to any person or authority, including, in appropriate cases, any Government, for the enforcement of any of the rights conferred by Part III of the Constitution of India and for any other purpose. If an authority/body is 'State' within the meaning of Article 12 of the Constitution of India, a writ petition under Article 226 of the Constitution of India is maintainable against such an authority/body for the aforesaid purposes. The provisions of Article 12 of the Constitution of India have provided that 'the State' includes the Government and Parliament of India and the Government and Legislature of each States as well as 'all local or other authorities within the territory of India or under



the control of the Government of India'. Under Article 226 of the Constitution of India, the power of the High Court is not limited to the Government or authority which qualifies to be 'State' under Article 12 of the Constitution of India but is extended for issuing directions, orders or writs 'to any person or authority' also. Again, this power of issuing directions, orders or writs is not limited to enforcement of fundamental rights conferred by Part III, but also 'for any other purpose'. Thus, the power of the High Court takes within its sweep more authorities than stipulated in Article 12 of the Constitution of India and the subject matter which can be dealt with under Article 226 of the Constitution of India is also wider in scope. The words 'any person or authority' used in Article 226 of the Constitution of India are not to be confined only to statutory authorities and instrumentalities of the State. They may cover any other person or authority/body performing public duty and it is the nature of duty imposed on the authority/body which is relevant. The guiding factor is the nature of duty imposed on such an authority/body, namely, public duty to make it covered under the ambit of Article 226 of the Constitution of India.

27. The respondent Bank is undoubtedly an authority under Article 12 of the Constitution of India. In *Comptroller and Auditor-General of India, Gian Prakash, New Delhi and another vs. K.S. Jagannathan and another*, reported in [1986] 2 SCC 679, the Hon'ble Supreme Court of India has observed as under :-

20. There is thus no doubt that the High Courts in India exercising their jurisdiction under Article 226 have the power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon it by a statute or a rule or a policy decision of the government or has exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant considerations and materials or in such a manner as to frustrate the object of conferring such discretion or the policy for implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article



226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

28. While dealing with the word, 'authority' appearing in Article 226 of the Constitution and dealing with the issue as to whether Mandamus will lie even if the duty is not imposed under a statute, the Hon'ble Supreme Court of India in **Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and others**, reported in [1989] 2 SCC 691, has held as follows :-

22. Here again we may point out that mandamus cannot be denied on the ground that the duty to be enforced is not imposed by the statute. Commenting on the development of this law, Professor de Smith states : "To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." We share this view. The judicial control over the fast expanding maze of bodies affecting the rights of the people should not be put into watertight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available 'to reach injustice wherever it is found'. Technicalities should not come in the way of granting that relief under Article 226. We, therefore, reject the contention urged for the appellants on the maintainability of the writ petition.

29. In **M/s Hyderabad Commercials [supra]**, the appellant, a Sub-Distributor of the respondent entity, M/s Unimech Appliances, had a current account in a branch of the Indian Bank, where it had been depositing money through cheques from time to time. At one point of time, a sum of ₹ 12.95 lakhs was transferred to the account the respondent, M/s Unimech Appliances. The appellant protested the transfer of the said amount on the ground that it had never authorized the bank



for transferring the amount. The respondent Indian Bank in two letters admitted that the transfer had been made in an unauthorized manner and the same would be re-credited to the account of the appellant. In spite of its admission of liability and assurance to re-credit the amount to the appellant's account the respondent Indian Bank failed to honour its commitment. The appellant filed the writ petition for issue a mandamus directing the respondent Indian Bank to deposit the amount in its account. Though initially the respondent Indian Bank accepted its mistake and admitted the liability with the assurance to re-credit the amount but, later on, it resiled and raised a plea of oral authority. With findings that the plea so made, was with a view to defeat the appellant's claim and terming the Bank's act reprehensible and detrimental to public interest, the Hon'ble Supreme Court in such obtaining fact situation had observed that the respondent Bank being an instrumentality of the State was under a legal obligation to pay back the amount to the appellant. The Hon'ble Supreme Court of India in *Indian Bank* [supra] while issuing a series of directions in a bank scam involving officers of the banks, commission agents, etc., had observed that those directions should not be treated to be precedent. In *M/s Real Estate Agencies* [supra], it has been observed that there is no universal rule or principle of law which debars the writ court from entertaining adjudication involving disputed question of fact. No question or issue would be beyond the adjudicatory jurisdiction under Article 226, even if such adjudication would require taking of evidence. But what facts are in dispute and what are admitted could only be determined after an affidavit-in-reply is filed by the State. The discretionary jurisdiction under Article 226 of the Constitution of India is to be exercised on sound judicial principles.

30. In *Zonal Manager, Central Bank of India vs. Devi Ispat Limited and others*, reported in [2010] 11 SCC 186, the Hon'ble Supreme Court of India has observed that the appellant Bank being a public sector bank, discharging public functions is 'State' in terms of Article 12 of the Constitution of India and is, thus, amenable to writ jurisdiction under Article 226 of the Constitution of India. The respondent no. 1 company had been banking with the appellant bank and availing various credit facilities like term loan, working capital, demand loan, case credit, etc. In the year



2006, pursuant to a request from the respondent no. 1 company, the appellant bank reviewed and enhanced credit facilities of the respondent company's account. Due to various irregularities in the account of the respondent company in the subsequent period, the appellant bank advised the respondent company to shift its loan account to some other bank. The appellant bank found commission of fraud and transfer of huge amount of fund in the account of the respondent company and complaining of the fraud, it submitted complaints before police to investigate into the matter. The respondent company requested the appellant bank to hand over the original title deeds and other collateral securities held by it to the State Bank of India to whom the respondent company had transferred its account. The State Bank of India issued a banker's cheque of ₹ 15 crores to the respondent company which the appellant bank had encashed and appropriated in lieu of the outstanding balances lying against the respondent company. When despite request from the respondent company the appellant bank did not return the security documents and did not issue 'no objection certificate' and 'no due certificate', the respondent company preferred a writ petition. The writ petition was allowed with a direction to the appellant bank to release the security documents. The appellant bank preferred a writ appeal before the Division Bench which dismissed the writ appeal. Being aggrieved thereby, the appellant bank preferred a civil appeal before the Hon'ble Supreme Court of India by way of special leave. The Hon'ble Supreme Court of India has *inter alia* observed that if the instrumentality of the State acts contrary to public good, public interest, unfairly, unjustly, unreasonably, discriminatorily and in violation of Article 14 of the Constitution of India in its contractual or statutory obligation, a writ petition would be maintainable provided there exists a legal right and a corresponding legal duty on the part of the instrumentality of the State and if any action on its part is wholly unfair or arbitrary. It has been held therein that in view of the settlement of the dues on the date of filing of the writ petition by arrangement made through another nationalized bank and the statement of accounts furnished by the appellant bank stated that there was nil outstanding, the High Court was fully justified in issuing a writ of mandamus for return of the title deeds.



31. In **Pradeep Kumar and another vs. Post Master General and others**, reported in [2022] 6 SCC 351, a three-judges Bench of the Hon'ble Supreme Court of India has considered a bank's liability for acts of employees. It is held to the effect that what is relevant is whether the crime, in the form of fraud, etc., was perpetrated by the employees during the course of their employment. Once the same is established, the employer would be liable for the employees' wrongful act, even if they amount to a crime. It has gone on to observe as under :-

57. We begin by noting that M.K. Singh is not a third person but an officer and an employee of the Post Office. Post Office, as an abstract entity, functions through its employees. Employees, as individuals, are capable of being dishonest and committing acts of fraud or wrongs themselves or in collusion with others. Such acts of bank/post office employees, when done during their course of employment, are binding on the bank/post office at the instance of the person who is damnified by the fraud and wrongful acts of the officers of the bank/post office. Such acts of bank/post office employees being within their course of employment will give a right to the appellants to legally proceed for injury, as this is their only remedy against the post office. Thus, the post office, like a bank, can and is entitled to proceed against the officers for the loss caused due to the fraud, etc. but this would not absolve them from their liability if the employee involved was acting in the course of his employment and duties.

58. This Court in **State Bank of India vs. Smt. Shyama Devi**, reported in [1978] 3 SCC 399, held that for the employer to be liable, it is not enough that the employment afforded the servant or agent an opportunity of committing the crime, but what is relevant is whether the crime, in the form of fraud etc. was perpetrated by the servant/employee during the course of his employment. Once this is established, the employer would be liable for the employee's wrongful act, even if they amount to a crime. Whether the fraud is committed during the course of employment would be a question of fact that needs to be determined in the facts and circumstances of the case.



32. From the investigations conducted and concluded by the CBI and the Enforcement Directorate, it can be clearly seen that financial fraud, etc. in the respondent Bank had been committed by the employees in collusion with certain identified outsiders. The investigations did not find any involvement of the petitioners. Thus, the respondent Bank authorities could not absolve themselves from the responsibility of protecting the interests of their customers, that is, the petitioners whose subsidy amount of ₹ 53,32,800/- have been found unauthorisedly transferred and misappropriated in the process by way of fraud, etc. In the above obtaining fact situation of the case in hand, as discussed above, and in view of the findings arrived at for the reasons assigned, this Court is of the unhesitant view that non-adjustment of the subsidy amount of ₹ 53,32,800/- against the Term Loan Account of the petitioner no. 1 is an unfair, unjust, unreasonable and arbitrary act, contrary to public interest. In such view of the matter, the case in hand is a fit case wherein a direction in the nature of mandamus is clearly called for. Therefore, having regard to the balance outstanding dues position as on 28.02.2018, as certified by the respondent Bank in its letter dated 16.03.2018, and the position that the financing bank is not authorized to apply any interest in the subsidy, admissible to the borrowers, kept in the Subsidy Reserve Fund Account it is ordered that the respondent Bank authorities shall take necessary steps to transfer the amount of ₹ 53,32,800/-, already received on 24.01.2003 under the Capital Investment Subsidy Scheme and stood credited in the Subsidy Reserve Fund Account maintained at its Tezpur Branch, to the Term Loan account of the petitioner no. 1 and adjust the same against the balance outstanding dues of the petitioner no. 1 in an expeditious manner, but not later than a period of 1 [one] month from today. The respondent Bank authorities are further directed to take the final decision, with due communication to the petitioners, as regards closure of the loan accounts of the petitioners and return of the security documents by taking into purview the findings and observations recorded hereinabove and after such final decision, to complete the requisite formalities as per the prescribed procedure also within the same outer limit of 1 [one] month from today. It is further observed that in the event the transfer and adjustment of the subsidy amount of ₹ 53,32,800/- is not made within a period of 1 [one] month from today,



then the said amount will carry interest, payable to the petitioner no. 1, @ 9% per annum from 28.02.2018 till the date of such transfer and adjustment.

33. With the observations made and the directions given above, the writ petition is allowed to the extent indicated.

JUDGE

Comparing Assistant